



The following constitutes
the order of the court. Signed November 4, 2014

M. Elaine Hammond

M. Elaine Hammond
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
Emma Elkins Price,

Case No. 11-55215 MEH
Chapter 13

Debtor./

MEMORANDUM DECISION

An evidentiary hearing was held October 17, 2014 on Debtor's objection to claim number 10 of Lenore E. McGann ("Claimant"). Ralph Guenther appeared on behalf of Debtor. Claimant did not appear at the hearing. Debtor's son, Edward Elkins, testified on behalf of Debtor.

Debtor contends that res judicata bars Claimant from asserting the debt because the parties' dispute was adjudicated in Debtor's favor in a judgment issued August 26, 2013 in case no. C000040-11 of the Superior Court of New Jersey, Chancery Division, Cape May County (the "State Court" and "State Court Judgment"). Debtor further asserts that Claimant's proof of claim is time-barred, and on those bases seeks disallowance of the claim in its entirety.

////

1 The State Court held a three-day trial in March 2013 on a property
2 dispute between Debtor and Claimant. Debtor sought a partition of the
3 parties' jointly-owned real property located in Cape May County, New
4 Jersey and Claimant raised a counterclaim to recover money allegedly
5 owed.

6 The first count in Claimant's State Court counterclaim sought
7 damages and court costs based on Debtor's alleged commingling and
8 misuse of rental income and mortgage proceeds from a property she
9 managed for Claimant in Dillon, Colorado. The second count sought
10 damages for similar conduct alleged in relation to a house in Cape May,
11 New Jersey. The third count sought damages arising out of alleged
12 overpayments Claimant made to Debtor on a loan obligation. The final
13 count sought damages for Debtor's alleged non-payment of a Demand Note
14 upon Claimant's demand for payment.

15 The State Court dismissed the first, third and fourth counts,
16 based in part on the claims being barred by the applicable statute of
17 limitations, and denied the second count pursuant to the doctrine of
18 laches.

19 Claimant's letter to the court (docket no. 41) challenges the
20 State Court Judgment and alleges that she was not given proper notice
21 of this bankruptcy.

22
23 Burden of Proof for Establishing a Claim

24 A proof of claim is deemed allowed unless a party in interest
25 objects under 11 U.S.C. § 502(a). It constitutes prima facie evidence
26 of the validity and amount of the claim pursuant to Bankruptcy Rule

1 3001(f).¹ Once an objection is made, a proof of claim remains
2 sufficient absent evidence of its invalidity.² An objecting party
3 bears the burden of providing evidence of a proof of claim's
4 invalidity.³ Once the objecting party has met this burden, the
5 claimant bears the ultimate burden of proof.⁴

6
7 Res Judicata

8 Debtor asserts that res judicata precludes relitigation of the
9 debt asserted in the proof of claim. The State Court Judgment,
10 complaint and Claimant's amended answer, counterclaim and third party
11 complaint were introduced as evidence at trial. Mr. Elkins testified
12 that the trial was conducted in 2011 over three days, that he
13 participated in the trial on two of those days, and that Claimant also
14 testified at the trial. He further testified as to his belief that
15 there is no difference between the damages in Claimant's proof of claim
16 and the damages sought in her State Court counterclaim, which was
17 denied.

18 A federal court must give to a state court judgment the same
19 preclusive effect as would be given that judgment under the law of the
20 state in which the judgment was rendered. *Migra v. Warren City Sch.*

21
22 _____
23 ¹ *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039
(9th Cir. 2000).

24 ² *Id.*

25 ³ *In re Garvida*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006).

26 ⁴ *Id.*

1 *Dist. Bd. of Educ.*, 465 U.S. 75 (1984); 28 U.S.C. § 1738. Accordingly,
2 this court may not relitigate the existence of Claimant's debt if res
3 judicata bars such relitigation under New Jersey law.

4 Under New Jersey law, res judicata may apply if there is:

- 5 (1) a final judgment by a court of competent jurisdiction,
6 (2) identity of issues,
7 (3) identity of parties, and
8 (4) identity of the cause of action.

9 *Brookshire Equities, LLC v. Montaquiza*, 346 N.J. Super. 310, 318 (N.J.
10 Super. Ct. App. Div. 2002).

11 The State Court issued a final judgment on August 26, 2013 and
12 the time for filing a notice of appeal is expired.⁵ The parties in
13 that action were the same as the parties in this action. The issue
14 determined by the state court is the same issue that is before this
15 court: whether Claimant has an interest in the funds in dispute. The
16 cause of action here is similarly the same cause of action that was
17 before the State Court: Debtor seeks to recover funds allegedly owed
18 related to the two properties. The "identity of issues" and "identity
19 of the cause of actions" prongs are satisfied by the documents admitted
20 into evidence and Mr. Elkins' testimony. Accordingly, based on that
21 evidence, Defendant has satisfied the elements required to assert res
22
23
24
25

26 ⁵ N.J. Ct. R. 2:4-1(a).

1 judicata under New Jersey law. Under California state law, the outcome
2 would be the same.⁶

3 Having provided evidence that this court is bound by the State
4 Court's determination that Claimant is not entitled to recover for the
5 debts listed in her proof of claim based on the doctrine of laches and
6 the applicable statute of limitations, Debtor has rebutted the
7 presumption of validity of Claimant's proof of claim, and Claimant
8 bears the ultimate burden of proof.

9 In her letter to the court and pre-trial statement (docket no.
10 59), Claimant questions the integrity of Mr. Elkins' testimony in the
11 State Court proceedings and challenges the State Court Judgment on that
12 basis. The Rooker-Feldman doctrine prohibits this court from sitting
13 in review of the State Court Judgment. Claimant has not raised any
14 other argument relevant to the issue before the court, nor did she
15 present evidence sufficient to meet her burden of persuasion.

16
17 Notice of the Bankruptcy Case

18 The court need not address Claimant's allegations of improper
19 notice of this bankruptcy case. The docket reflects that Claimant was
20 not included in the original creditor matrix and did not receive notice
21

22 ⁶ See *Lucido v. Superior Court*, 51 Cal. 3d 335, 341, 795 P.2d 1223,
23 1225 (1990) (res judicata may apply if: (1) the issues are
24 identical; (2) the issue was actually litigated in the former
25 proceeding; (3) the issue was necessarily decided in the former
26 proceeding; (4) the decision in the former proceeding was final and
 on the merits; and (5) the party against whom preclusion is sought
 is the same or in privity with the party to the former proceeding).

1 of the bankruptcy filing. Subsequently, she filed her proof of claim,
2 which gave way to this evidentiary hearing on Debtor's objection to
3 claim. Any defect in notice at the outset of the bankruptcy was cured
4 by Claimant's opportunity to file a proof of claim and be heard in this
5 evidentiary hearing on the allowance of her claim.

6
7 Based on the foregoing, the court sustains the objection to claim
8 and disallows Claimant's proof of claim in full. The court will issue
9 a separate order contemporaneous with this memorandum decision.

10
11 **END OF MEMORANDUM DECISION**
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COURT SERVICE LIST

Lenore E. McGann
PO Box 998
Dillon, CO 80435

Via ECF:

Devin Derham-Burk, Chapter 13 Trustee
ctdocs@ch13sj.com

Ralph P. Guenther on behalf of Debtor Emma Elkins Price
courts@tkdougherty.com

Office of the U.S. Trustee, San Jose
USTPRegion17.SJ.ECF@usdoj.gov, ltroxas@hotmail.com